May 31, 1989

Honorable Lise A. Young Vice Mayor 5555 Skyway Paradise, CA 95969

> Re: Your Request for Advice Our File No. A-89-149

Dear Ms. Young:

This is in response to your request for advice regarding your responsibilities under the conflict-of-interest provisions of the Political Reform Act (the "Act"). 1 Our response confirms our telephone advice and incorporates additional information you have provided to us, including that which is contained in your letter of May 11, 1989.

QUESTIONS

- 1. Does your involvement with citizen groups which oppose the development of a mobile home park give rise to a conflict of interest requiring your disqualification?
- 2. Does the location of your residence within 453 feet from the proposed site of a mobile home park create a conflict of interest requiring your disgualification?

CONCLUSION

- 1. Your involvement with citizen groups which oppose the development of a mobile home park in your community does not give rise to a conflict of interest requiring your disqualification.
- 2. The location of your residence within 453 feet from the boundaries of the proposed mobile home park may require your disqualification.

dovernment Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

FACTS

You are the Vice Mayor of the Town of Paradise. According to information you have provided, the Town of Paradise had a population of 22,481 in 1980. You believe that the total population is now approximately 25,000 residents. The town extends over 11,597 acres of land and has a total of approximately 9,384 single family owner-occupied residences.

You own your residence which is located within the boundaries of census tract 22. This is also the area where a proposed mobile home park will be located. The total population of tract 22 according to the 1980 census was 3,487 residents. Your home is located 453 feet from the site of the proposed mobile home park. There are 143 single family owner-occupied residences within a similar distance from the project. Your residence is located 2,112 feet from the intersection of Berry Drive and Buschmann Road, where the proposed access to the project will be located. For purposes of our analysis we shall assume that your interest in your residence is worth more than \$1,000.

Prior to your election to the Paradise Town Council, you organized a group of Paradise residents who opposed approval of the mobile home park. This group became affiliated with a local organization which collected funds for the purpose of investigating the feasibility of placing a limited growth initiative on a future local ballot. When you announced your candidacy for the town council, you received the active support of these neighborhood groups.

ANALYSIS

Section 87100 prohibits a public official from making, participating in, or using his or her official position to influence any governmental decision in which the public official has a financial interest. As Vice Mayor for the Town of Paradise, you are a public official. (Section 82048.)

An official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from the effect on the public generally, on the official or any member of his or her immediate family, or on:

- (b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.
- (c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to,

received by or promised to the public official within 12 months prior to the time when the decision is made.

(Section 87103(b) and (c).)

Your involvement with citizen groups for political purposes and the subsequent endorsement of these groups to your campaign do not create a conflict of interest for you. These citizen groups were not a source of income or gifts to you requiring your disqualification. You are required, however, to disqualify from participating in governmental decisions whenever the decisions will foreseeably and materially affect your residential property in a manner that is distinguishable from the effect on the public generally.

<u>Foreseeability</u>

The effects of a decision are reasonably foreseeable if there is a substantial likelihood that they will occur. To be foreseeable, the effect of a decision must be more than a mere possibility. Certainty is not required; however, if the effect is a mere possibility, it is not reasonably foreseeable. (In re Thorner (1975) 1 FPPC Ops. 198, copy enclosed.)

There is a substantial likelihood that the location of a mobile home park in the vicinity of your home will result in an increase in traffic, population density, air pollution and demand for services which will tend to affect the value of single family dwellings in the area. Thus, it is reasonably foreseeable that the decision will affect the value of your home.

Material Financial Effect

For properties located between 300 and 2,500 feet from the property which is the subject of the decision, the effect of the decision is material if it will have a foreseeable financial effect of:

- (A) Ten thousand dollars (\$10,000) or more on the fair market value of the real property in which the official has an interest; or
- (B) Will affect the rental value of the property by \$1,000 or more per 12 month period.

(Regulation 18702.3(a)(3), copy enclosed.)

You have stated that your property is situated 453 feet from the proposed location of a mobile home park. Whether the effect of the decision on your property is positive or negative is of no consequence under the Act. (<u>Dowd</u> Advice Letter, No. A-88-214; <u>Scher</u> Advice Letter, No. A-88-479, copies enclosed.)

Because your property is situated within 2,500 feet of the boundaries of the proposed mobile home park, you are required to disqualify from participating in decisions related to the proposed mobile home park if the decision will have a reasonably foresee—able financial effect of increasing or decreasing the fair market value of your property by \$10,000 or more or result in an increase or decrease of \$1,000 or more in the annual rental value of your property. Though the financial effect of the decision cannot be easily ascertained, it is possible that the decision to locate a mobile home park in the vicinity of your home may result in an increase or decrease in the value of your home. In such a case, it is reasonably foreseeable that the decision would be material if the value of your home increases of decreases by \$10,000 or more.

Public Generally

The remaining issue is whether the decision will have an effect on your property which is distinguishable from the effect on the public generally. For the "public generally" exception to apply, a decision must affect the official's interests in substantially the same manner as it will affect a significant segment of the public. (Regulation 18703; <u>In re Legan</u> (1985) 9 FPPC Ops. 1, copies enclosed.

For purposes of our analysis, the "public" consists of the entire jurisdiction of the agency in question. (In re Owen (1976) 2 FPPC Ops. 77, copy enclosed.) In the present situation, the public is the entire population of the Town of Paradise. Consequently, for the public generally exception to apply to your situation, the proposed location of the mobile home park would have to affect a significant segment of the single family owner-occupied residences of the Town of Paradise in substantially the same manner as it would affect your residence. (Scher Advice Letter, supra.)

There is no strict arithmetic guideline for determining what constitutes a significant segment of the public. (Calhoun Advice Letter, No. A-88-362, copy enclosed.) The Commission has stated, however, that a group that is large in numbers and heterogeneous in quality constitutes a significant segment of the public for purposes of the "public generally" exception. (In re Ferraro (1978) 4 FPPC Ops. 62, In re Owen, supra, copies enclosed.) In the Owen opinion, applying the Ferraro test, the Commission concluded that a large and diverse group with its only common bond being the relationship in the group qualifies for this limited exception and thus homeowners living near a particular area of a city constituted the public generally.

For example, the Commission has advised that owners of homes in a city's scenic corridor overlay zone constitute a significant segment of the public. This group owned approximately 9,000 of the 39,600 single family homes in the city (approximately 23%.)

Our File No. A-89-149 Page 5

Furthermore, the scenic corridor covered approximately 15 square miles, which represented approximately one third of the city's land area. (Flynn Advice Letter, No. I-88-430, copy enclosed.)

Comparing these decisions to your facts, we find that the public generally exception does not apply. The location of the mobile home park would affect 143 of the 9,384 single family owner-occupied residences in the Town of Paradise. This is a mere 1.5 percent of the total number of residences and is an insufficient number to qualify for this limited exception.

We conclude, then, that because your property is situated within 2,500 feet of the proposed site of a mobile home park, you must disqualify from participating in decisions related to the location of the mobile home park if the location of the project will result in an increase or decrease in the value of your property in the amount of \$10,000 or more.

If you have any further questions regarding this matter, do not hesitate to call me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan General Counsel

By: Blanca M. Breeze

Counsel, Legal Division

KED/BMB:aa

Enclosures



TOWN OF PARADISE 5555 Skyway, Paradise, California 95969

William L. Allen, M.D., Mayor Lise A. Young, Vice Mayor Larry R. Duncan, Council Member Bob Jeffords, Council Member Howard Johnson, Council Member (916) 872-6291

May 11, 1989

Fair Political Practices Commission

Attention: Blanca Breeze

PO Box 807

Sacramento, CA 95804

Dear Ms. Breeze:

Per our conversations earlier this week, I am providing the following additional information which you had requested last Friday:

- Total single family owner-occupied residences in the Town of Paradise: approximately 9,384
- 2. Total owner-occupied residences within approximately the same distance of the subject project at 5463 Scottwood Road: 143
- 3. Approximate distance from 5463 Scottwood Road to project access:
 - .4 miles to intersection of project access and public thoroughfare (Berry Dr. & Buschmann Road
 - .6 mile to project boundary via Berry Creek Drive
- 4. Distance from 5463 Scottwood Road to project property line:

from property line closest to project: 453 feet from residence structure: 553 feet

To help you visualize the physical location and orientation of the proposed project site, I have enclosed a copy of the small parcel map that the project applicant and Town Planning staff have provided. Because these maps are usually much larger, I am not sure that the scale indicated in the lower right hand corner of the map copy is accurate for this down-sized copy of the map. I have also enclosed a copy of a map showing the layout of an area roughly within a mile radius of the project and the zoning designations in force within that area.

Fair Political Practice Commission May 11, 1989 Page two

For your further information, the appeal on this project to the Town Council was filed on May 8, 1989. I have enclosed a copy of that notice of appeal for your information.

At this point, it appears likely that the Town Council will be hearing this matter at a specially scheduled meeting on May 30, 1989. It is essential that I have your formal asdvice letter before that time. I realize that state law gives you 21 working days to provide a formal opinion from the date of request; however, as we have discussed, substantial research has already been done on this question and therefore it should be possible to produce the final formal opinion in substantially less time than would otherwise be the case.

Please do not hesitate to contact me if there is any additional information you need.

Very truly yours,

Lise A. Young Attorney at Law

LAY/b

Enclosures

RECEIVED

MAY 8 1989

TOWN OF PARADISE
Town Clerk's Office

APPEAL TO PARADISE TOWN COUNCIL

Appeal is hereby made to the decisions of the Paradise Planning Commission on May 1, 1989, with respect to Use Permit Application Number 24-37 (Plantation Mobile Home Park), whereby the Paradise Planning Commission:

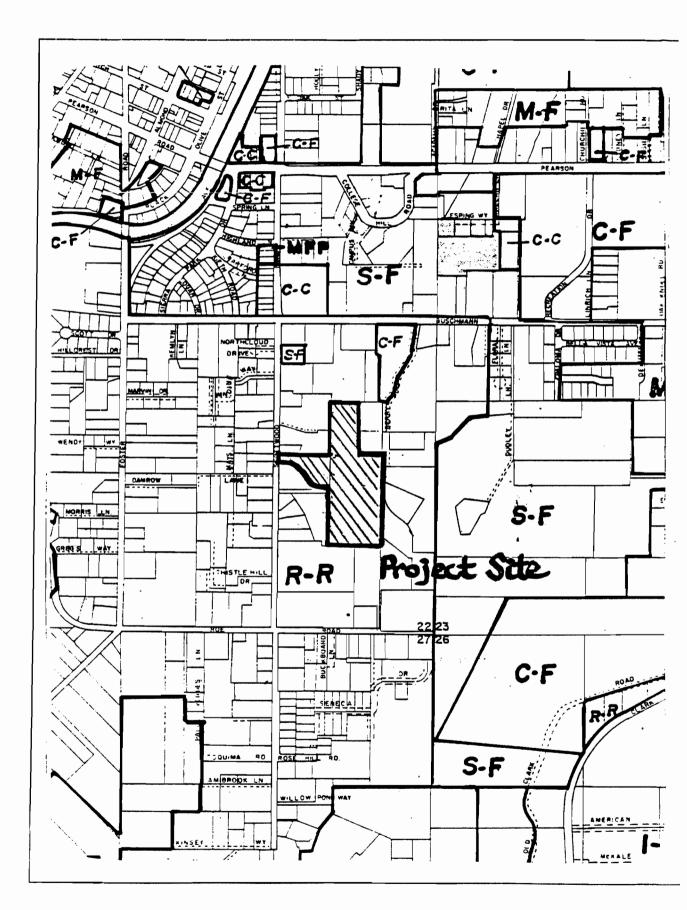
- 1. Certified the final Environmental Impact Report for the Plantation Mobile Home Park project, including its amendments dated April 24, 1989 as complete in compliance with the requirements of CEQA and CEQA guidelines; and
- 2. Approved the application for use permit.

This appeal to these decisions of the Paradise Planning Commission will be based upon the entire administrative record of these proceedings, including written materials and oral evidence submitted by the undersigned before the Planning Commission and at the hearing of this appeal.

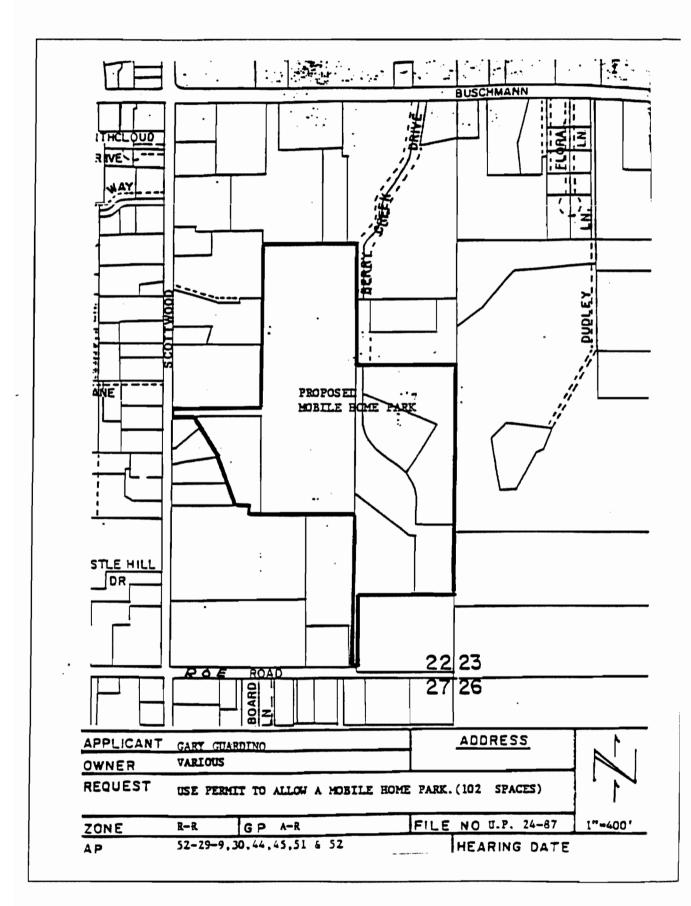
Request is respectfully made that the hearing on this appeal be scheduled for a special evening session before the Paradise Town Council.

Dated: May 8, 1989

Submitted by Don Lieberman, individually and on behalf of Citizens For Responsible Growth.



ZONING MAP



USE PERMIT MAP



TOWN OF PARADISE 5555 Skyway, Paradise, California 95969

William L. Allen, M.D., Mayor Lise A. Young, Vice Mayor Larry R. Duncan, Council Member Bob Jeffords, Council Member Howard Johnson, Council Member

(916) 872-6291

March 2, 1989

Fair Political Practices Commission Office of General Counsel P. O. Box 807 Sacramento, CA 95804

Dear Sirs/Ladies:

I am writing this letter in order to request formal written advice pursuant to Government Code Section 83114(b) regarding a possible conflict of interest situation which may confront me within the next two to three months. Following is a summary of the relevant facts and circumstances relating to the situation.

During the spring and summer of 1988, prior to my election to the Paradise Town Council and before announcement of any candidacy for that position, I was instrumental in organizing a group of Paradise residents who were opposed to two major multifamily residential developments in areas not specifically zoned for such use. One of these projects, a 100+ unit mobile home park, is to be located within 1/2 mile of my property. My activities in the group included organizing several meetings among the neighbors directly impacted by one of the mobile home parks, expanding membership of that core group to other community organizations involved in opposing the second of the two projects and with a citizen's "watchdog" group, making presentations at those meetings, and preparing a substantial written document on behalf of the opponents of the mobile home park (under my own personal name) that was a primary factor in the Town Planning Commission's decision to require that the developer prepare an environmental impact report.

Additionally, the larger coalition group collected funds from members and concerned citizens at large to investigate the feasibility of placing a limited growth initiative on a future ballot. I contributed \$100.00 to this effort.

FPPC Office of General Counsel March 2, 1989 Page Two

Although approximately two meetings were held by this coalition group and around \$2,500.00 was raised, no substantial action toward actually placing an initiative on any ballot was ever taken.

In September of 1988, I announced my candidacy for a position on the Town Council of Paradise, one of three positions that were before the voters. (There are five members of the Town Council.) During my campaign, I received the active support of the coalition group I had helped found, in addition to the personal support of the neighborhood group that I had helped organize, and also campaigned on many of the same issues that I had raised as a member and organizer of these citizen action committees. After announcement of my candidacy, activities of both groups subsided considerably, and I am unaware of any further meetings by either group until February of this year.

I was elected by a large margin to a Town Council seat in November of 1988. Since I have attended no meetings of either organization, despite renewed activity in February of this year by the neighborhood group in opposing the draft EIR that was prepared on the mobile home project. I did not participate in the formulation of the documents presented in opposition to the EIR at a meeting before the Town Planning Commission in February I was aware of the efforts because my husband did continue his participation in the neighborhood group's activities, and I am personal friends with several of the neighbors in the group. I did loan my personal copy of the draft EIR to two or three members of the group for them to copy for their own personal use, in order to save them the expense of obtaining a record from the Town, which would have cost substantially more. I did not sign the petition that was circulated by this group, nor did I appear at the public hearing on the draft EIR before the Planning Commission.

Based on the comments that were received from the public at the hearing on the draft EIR, a final EIR will be prepared within the next several months. This final document will be presented to the Planning Commission for review and certification. Because of the controversial nature of the project in question, I expect that regardless of the direction of the Planning Commission's decision, one or the other party will ultimately appeal that decision to the Town Council. At some point in the future, therefore, I predict that I will be placed in the position of ruling on the sufficiency of the EIR and, ultimately, on the propriety of the proposed project itself via an appeal of the Commission's decision to grant or deny a use permit.

I live in a house that I have purchased which is located within one-half mile of the boundary of the proposed site, although I do not know exactly what the distance is between my

property and the nearest boundary line. The public street that provides access to my property was originally planned to be the primary access to the proposed mobile home park, which would have required substantial road improvements and widening; however, as the project now is visualized, primary access will be provided on a different public street which runs perpendicular to the road in front of my house at some distance from my property.

I do not foresee any improvements which the developer may be required to make that will have any direct benefit to my property, as the project is presently planned. It is conceivable — and in fact was one of the concerns of the neighbors opposing this project — that this type of project may have an adverse affect on property values in the area. However, the project proponent states that he feels that the project will actually enhance property values. In either event, I do not believe that there is anything about the location of the project and my property which would tend to cause any greater affect on my own property than on the several other properties that would be similarly impacted. (There are more than ten such properties in my vicinity and the vicinity of the project.)

I would appreciate your opinion as to whether or not the circumstances I described above would subject me to a potential conflict of interest situation when and if the Town Council is faced with making any decision affecting this particular project's implementation, including but not necessarily limited to: review of any draft or final EIR, or hearing an appeal from the Planning Commission's decision granting or denying a use permit for the project.

Thank you in advance for your assistance.

LISE A. YOUNG

Very truly yours

La 31/10/



TOWN OF PARADISE 5555 Skyway, Paradise, California 95969

William L. Allen, M.D., Mayor Lise A. Young, Vice Mayor Larry R. Duncan, Council Member Bob Jeffords, Council Member Howard Johnson, Council Member

(916) 872-6291

April 17, 1989

Fair Political Practices Commission Attn: Blanca Breeze P. O. Box 807 Sacramento, CA 95804

Dear Ms. Breeze:

Per our conversation last week regarding my request for an FPPC opinion (dated March 2, 1989), I am providing the following information to you:

- 1. A map of the Paradise Town limits, census tracts and population of each of the tracts, per the 1980 census. No more recent census data are available. I believe that the actual population is presently close to 25,000.
- 2. The census map gives you some idea of the population densities within the Town limits. I live within the boundaries of census tract 22 on the map, which is also the area within which the mobile home park is proposed to be built.
- 3. The total acreage in the Town (again, as of 1980) is 11,597 acres. I believe this figure is still fairly accurate, although there have been piecemeal annexations of small parcels and one rather more substantial annexation of an area along Pentz road since 1980. I would sincerely doubt, however, if total acreage exceeds 12,000 acres today, and quite probably is less.

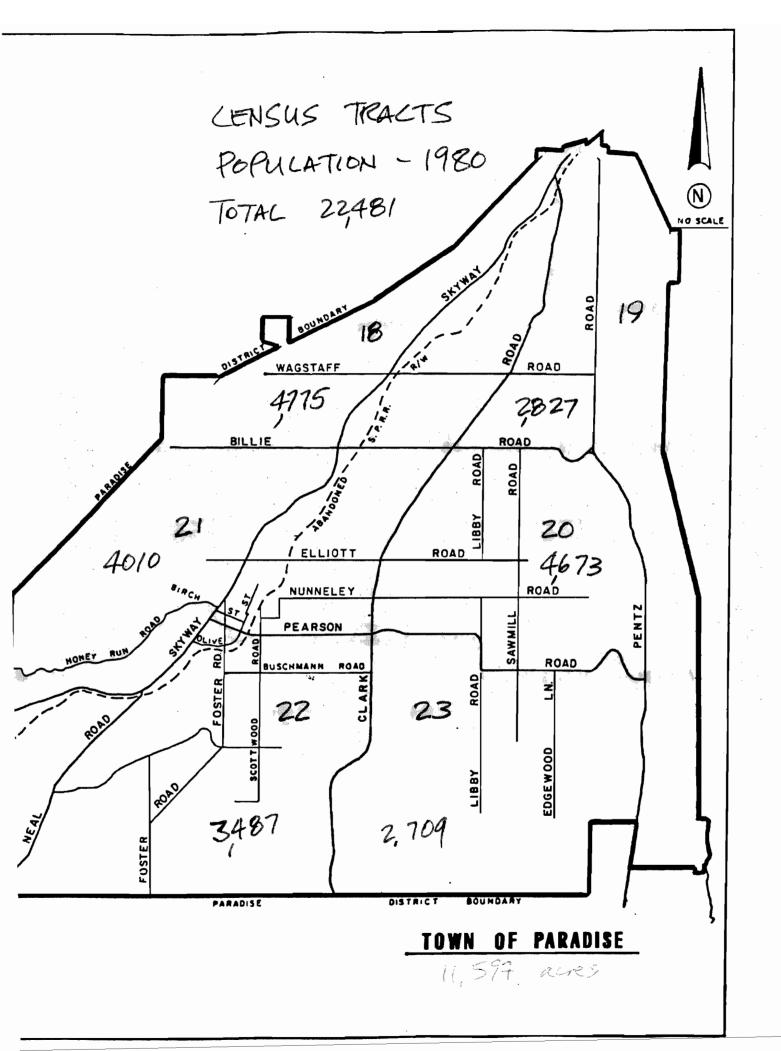
I hope that this information assists you in formulating a response to my request.

I am somewhat concerned that I will not be receiving a formal opinion, as I had requested. As of this minute, it is correct to say that there is no action pending before the Council of which I am a member relating to the legal issue that I raised with the FPPC. However, I can virtually guarantee that this issue will be formally before the Council within 30-60 days, and at that time, I will be required either to vote or not to vote on the acceptability of the proposed project's EIR. I had hoped to have a formal, binding opinion from the FPPC already in hand at the time that I am called upon to vote on this issue so that I could either vote with the assurance that I was not guilty of any conflict, or not vote and provide binding, legal justification for that action. It will do me little good to obtain a "formal" opinion on a matter that I have already had to act on! . . . and I see no way I can "defer" voting until such time as I have the FPPC's last and final word on my question.

I would sincerely appreciate it if the Commission would reconsider my request for a formal written opinion in light of the above.

Very truly yours,

LISE A. YOUNG



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TOWN OF PARADISE 5555 Skyway, Paradise, California 95969

William L. Allen, M.D., Mayor Lise A. Young, Vice Mayor Larry R. Duncan, Council Member Bob Jeffords, Council Member Howard Johnson, Council Member

(916) 872-6291

May 5, 1989

Fair Political Practices Commission Attn: Blanca Breeze P. O. Box 807 Sacramento, CA 95804

Dear Ms. Breeze:

Per my conversation with you yesterday, I am hereby advising the Commission that the matter on which I have sought the Commission's advice has now come before the Planning Commission of the Town of Paradise and will be appealed directly to the Town Council, of which I am a member.

On May 1, 1989, the Planning Commission held a public hearing on the certification of the Final EIR for the Plantation Mobile Home Park project as well as the issuance of the use permit for that project. The Planning Commission approved the Final EIR for certification and approved issuance of a use permit. I have been informed by the Town Clerk that she has received inquiries from the opponents of the project requesting information on the procedures for appeal, indicating that an appeal will be filed. The deadline for filing the notice of appeal is Monday, May 8, 1989 at 5:00 p.m.

According to Town ordinances, the Town Council must hold a hearing on the appeal within 30 days of the date the notice of appeal is filed with the clerk. Thus, a hearing on the appeal will be held sometime before June 8, 1989, quite possibly at a special meeting on May 30, 1989 or during the week of June 5-8.

I am providing advance warning to the Commission that this appeal will be pending before the Council at a meeting during the time periods specified above, in order to provide the Commission as much time as possible within which to provide the formal written advice letter that I have requested previously and which I am again requesting by this letter. I understand that the

Commission has 21 working days in which to prepare the requested formal advice. However, the Commission has had my request for advice on file since approximately March 2, 1989, and Ms. Blanca Breeze has done substantial preliminary research on my question. I would therefore hope that the Commission will be able to provide the requested opinion substantially prior to its 21-day deadline.

PLEASE ADVISE immediately if the Commission will not be able to provide its formal written advice prior to May 30, 1989 in order that my concerns can be taken into account in calendaring this matter for hearing before the Council.

Sincerely yours,

LISE A. YOUNG Attorney at Law

cc Frankie Rutledge, Town Clerk

March 7, 1989

Honorable Lise A. Young Vice Mayor Town of Paradise 5555 Skyway Paradise, CA 95969

Re: Letter No. 89-149

Dear Ms. Young:

Your letter requesting advice under the Political Reform Act was received on March 6, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Jeevan Ahuja an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329.)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Diane M. Griffiths

General Counsel

DMG:plh